



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT FILLMORE FIELD OFFICE

35 East 500 North  
Fillmore, UT 84631  
<http://enbb.blm.interwebdesign.com>



**RECEIVED**

**AUG 20 2001**

**DIVISION OF  
OIL, GAS AND MINING**

In Reply Refer to:  
3809/3715  
(U-010)  
UTU-070557

August 16, 2001

CERTIFIED MAIL # 7000 1530 0006 2414 7039  
RETURN RECEIPT REQUESTED

### DECISION

DEXTER ANDERSON	:	Revocation of 43 CFR §3809
ATTORNEY	:	Plan of Operations
RED DOME INCORPORATED	:	And
SR BOX 52	:	43 CFR 3715 Notice of
FILLMORE UT 84631	:	Noncompliance

On April 25, 2001, this office issued Red Dome Inc. an order to submit a reclamation bond and occupancy proposal within 30 days of receipt of the order. Red Dome Inc. received it on April 26, 2001; however, as of the date of this letter, neither the bond nor the occupancy proposal has been submitted. Since approval of your Plan of Operations was contingent upon those two conditions, the approval has been revoked in accordance with 43 CFR §3809.602(a) and we are requiring that, within 90 days of receipt of this decision, a new Plan be submitted that meets with the requirements of the new 43 CFR §3809 regulations that took effect on January 20, 2001. A copy of the requirements for a Plan of Operations and the performance standards mandated by the new regulations are attached.

Please pay particular attention to §3809.401(b)(2)(i), which requires that detailed maps of the operation be provided. If you wish, BLM personnel can assist you with preparing maps with the use of global positioning system equipment and software.

We are also requiring that you submit, within 30 days of receipt of this decision, an interim reclamation bond in the amount of \$44,000. The amount of this bond is calculated by multiplying the estimated disturbed acreage for the revoked plan (8.8 acres) by \$5000 per acre, the amount required by the Utah Division of Oil, Gas and Mining for interim bonds.



Operating without an approved Plan of Operations and bond is a violation of 43 CFR §3715.6(b): "Except where other applicable laws or regulations allow, BLM prohibits the following:...Beginning occupancy before the filing, review, and approval or modification of a plan of operation as required under 43 CFR part 3800 subparts 3802 or 3809." In order to correct this violation, you must comply with the timeframes outlined above for submission of the Plan and Bond. If you fail to do so, we may issue a cessation order, as authorized by §3715.7-1(b)(1)(ii).

We are in possession of a June 1, 1998 letter you sent to the Utah Division of Oil, Gas, and Mining, in which you aver that Red Dome's activities are not under the jurisdiction of that agency due to the fact that the operation is a "rock aggregate" mine. The *Dictionary of Geological Terms* published by the American Geological Institute defines aggregate as:

1. A mass of body of rock particles, mineral grains, or both.
2. Any of several hard, inert materials, such as sand, gravel, slag, or crushed stone, used for mixing with a cementing or bituminous material to form concrete, mortar, or plaster; or used alone, as in railroad ballast or graded fill. See also: *coarse aggregate; fine aggregate; lightweight aggregate.*

The same source defines lightweight aggregate as:

An aggregate with a relatively low specific gravity, e.g. pumice, volcanic cinders, expanded shale, foamed slag, or expanded perlite or vermiculite.

We would like to call your attention to *Leroy S. Johnson*, IBLA 85-190 (1987) (copy attached) in which the Interior Board of Land Appeals found a mining claim located for cinders to be invalid. In that decision it is stated that "material which is principally valuable for fill purposes, for road base, or for ballast, for which ordinary earth and rock may be used, is not locatable under the mining laws (and was not locatable prior to 1955)" (100 IBLA 346).

"1955" refers to the year the Materials Act of 1947 (61 Stat. 681) was amended to mandate that common varieties of such materials as cinders were no longer locatable. Since the Red Dome claims were all located prior to that time, its location of common variety cinders may be valid as long as they are not used for "fill purposes, road base, or ballast". By maintaining that Red Dome's operation is an aggregate mine, a serious question of trespass against the United States Government is raised, especially in light of information recently brought to our attention that the Utah Department of



Transportation recently purchased a substantial quantity of cinders for road construction. This issue will be closely examined during processing of the new Plan.

In accordance with 43 CFR §3809.800, you may request the Utah State Director, Bureau of Land Management, to review this decision. If you exercise this right, you must, within 30 days after the date of the receipt of this decision, submit a single package that includes a brief written statement explaining why BLM should change its decision and any documents that support your written statement. Mark your envelope "State Director Review" and send it to the following address:

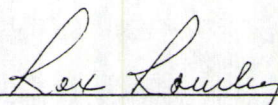
Bureau of Land Management  
Utah State Office  
PO Box 45155  
Salt Lake City, UT 84145-0155

You must also provide a telephone or fax number for the State Director to contact you. This decision will remain in effect during appeal unless a written request for a stay is granted.

If the decision of the State Director is adverse to you, you may then appeal to the Office of Hearings and Appeals (OHA). You may bypass the State Director and appeal directly to the OHA. Your written appeal must contain:

1. Your name and address
2. The BLM serial number of the Plan of Operations that is the subject of the appeal.

Further information on taking appeals to Board of Land Appeals is attached.

  
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Rex Rowley  
Field Manager

Enclosures:

Plan Content and Performance Standards

IBLA 85-190

Information of Taking Appeals to the Board of Land Appeals

cc: Gordon D. Griffin, 7 Ramshorn Ct., Savannah, GA 31411

D. Wayne Hedberg, (M/027/032)